

30 may:

31 (a) make and enforce rules to implement this chapter and, as necessary to protect
32 children's common needs for a safe and healthy environment, to provide for:

33 (i) adequate facilities and equipment; and

34 (ii) competent caregivers considering the age of the children and the type of program
35 offered by the licensee;

36 (b) make and enforce rules necessary to carry out the purposes of this chapter, in the
37 following areas:

38 (i) requirements for applications, the application process, and compliance with other
39 applicable statutes and rules;

40 (ii) documentation and policies and procedures that providers shall have in place in
41 order to be licensed, in accordance with Subsection (1)(a);

42 (iii) categories, classifications, and duration of initial and ongoing licenses;

43 (iv) changes of ownership or name, changes in licensure status, and changes in
44 operational status;

45 (v) license expiration and renewal, contents, and posting requirements;

46 (vi) procedures for inspections, complaint resolution, disciplinary actions, and other
47 procedural measures to encourage and assure compliance with statute and rule; and

48 (vii) guidelines necessary to assure consistency and appropriateness in the regulation
49 and discipline of licensees; and

50 (c) set and collect licensing and other fees in accordance with Section 26-1-6.

51 (2) (a) The department may not regulate educational curricula, academic methods, or
52 the educational philosophy or approach of the provider.

53 (b) The department shall allow for a broad range of educational training and academic
54 background in certification or qualification of child day care directors.

55 (3) In licensing and regulating child care programs, the department shall reasonably
56 balance the benefits and burdens of each regulation and, by rule, provide for a range of
57 licensure, depending upon the needs and different levels and types of child care provided.

58 (4) Notwithstanding the definition of "child" in Subsection 26-39-102(1), the
59 department shall count children through age 12 and children with disabilities through age 18
60 toward the minimum square footage requirement for indoor and outdoor areas, including the
61 child of:

- 62 (a) a licensed residential child care provider; or
- 63 (b) an owner or employee of a licensed child care center.

64 (5) Notwithstanding Subsection (1)(a)(i), the department may not exclude floor space
65 used for furniture, fixtures, or equipment from the minimum square footage requirement for
66 indoor and outdoor areas if the furniture, fixture, or equipment is used:

- 67 (a) by children;
- 68 (b) for the care of children; or
- 69 (c) to store classroom materials.

70 (6) (a) A child care center constructed prior to January 1, 2004, and licensed and
71 operated as a child care center continuously since January 1, 2004, ~~[may apply for a variance]~~
72 is exempt from the department for group size restrictions, if the child to caregiver ratios are
73 maintained, and adequate square footage is maintained for specific classrooms.

74 ~~[(b) The department may grant the variance requested in Subsection (6)(a).]~~

75 ~~[(c) A variance]~~ (b) An exemption granted under Subsection (6)~~(b)~~(a) is transferrable
76 to subsequent licensed operators at the center if a licensed child care center is continuously
77 maintained at the center.

78 (7) The department shall develop, by rule, a five-year phased-in compliance schedule
79 for playground equipment safety standards.

80 Section 2. Section **26-39-109** is amended to read:

81 **26-39-109. Investigations -- Records.**

82 (1) The department may conduct investigations necessary to enforce the provisions of
83 this chapter.

84 (2) For purposes of this section:

85 (a) "Anonymous complainant" means a complainant for whom the department does not

86 have the minimum personal identifying information necessary, including the complainant's full
87 name, to attempt to communicate with the complainant after a complaint has been made[;].

88 (b) "Confidential complainant" means a complainant for whom the department has the
89 minimum personal identifying information necessary, including the complainant's full name, to
90 attempt to communicate with the complainant after a complaint has been made, but who elects
91 under Subsection (3)(c) not to be identified to the subject of the complaint[; ~~and~~].

92 (c) "Subject of the complaint" means the licensee or certificate holder about whom the
93 complainant is informing the department.

94 (3) (a) If the department receives a complaint about a child care program or residential
95 child care, the department shall:

96 (i) solicit information from the complainant to determine whether the complaint
97 suggests actions or conditions which could pose a serious risk to the safety or well-being of a
98 child;

99 (ii) as necessary:

100 (A) encourage the complainant to disclose the minimum personal identifying
101 information necessary, including the complainant's full name, for the department to attempt to
102 subsequently communicate with the complainant;

103 (B) inform the complainant that the department may not investigate an anonymous
104 complaint;

105 (C) inform the complainant that the identity of a confidential complainant may be
106 withheld from the subject of a complaint only as provided in Subsection (3)(c)(ii); and

107 (D) inform the complainant that the department may be limited in its use of
108 information provided by a confidential complainant, as provided in Subsection (3)(c)(ii)(B);
109 and

110 (iii) inform the complainant that a person is guilty of a class B misdemeanor under
111 Section 76-8-506 if the person gives false information to the department with a purpose of
112 inducing a change in that person's or another person's licensing or certification status.

113 (b) If the complainant elects to be an anonymous complainant, or if the complaint

114 concerns events which occurred more than six weeks before the complainant contacted the
115 department:

116 (i) shall refer the information in the complaint to the Division of Child and Family
117 Services within the Department of Human Services, law enforcement, or any other appropriate
118 agency, if the complaint suggests actions or conditions which could pose a serious risk to the
119 safety or well-being of a child;

120 (ii) may not investigate or substantiate the complaint; and

121 (iii) may, during a regularly scheduled annual survey, inform the licensee or certificate
122 holder who is the subject of the complaint of allegations or concerns raised by:

123 (A) the anonymous complainant[-]; or

124 (B) the complainant who reported events more than six weeks after the events
125 occurred.

126 (c) (i) If the complainant elects to be a confidential complainant, the department shall
127 determine whether the complainant wishes to remain confidential:

128 (A) only until the investigation of the complaint has been completed; or

129 (B) indefinitely.

130 (ii) (A) If the complainant elects to remain confidential only until the investigation of
131 the complaint has been completed, the department shall disclose the name of the complainant
132 to the subject of the complaint at the completion of the investigation, but no sooner.

133 (B) If the complainant elects to remain confidential indefinitely, the department:

134 (I) notwithstanding Subsection 63-2-201(5)(b), may not disclose the name of the
135 complainant, including to the subject of the complaint; and

136 (II) may not use information provided by the complainant to substantiate an alleged
137 violation of state law or department rule unless the department independently corroborates the
138 information.

139 (4) (a) Prior to conducting an investigation of a child care program or residential child
140 care in response to a complaint, a department investigator shall review the complaint with the
141 investigator's supervisor.

142 (b) The investigator may proceed with the investigation only if:
143 (i) the supervisor determines the complaint is credible;
144 (ii) the complaint is not from an anonymous complainant; and
145 (iii) prior to the investigation, the investigator informs the subject of the complaint of:
146 (A) except as provided in Subsection (3)(c), the name of the complainant; and
147 (B) except as provided in Subsection (4)(c), the substance of the complaint.
148 (c) An investigator is not required to inform the subject of a complaint of the substance
149 of the complaint prior to an investigation if doing so would jeopardize the investigation.
150 However, the investigator shall inform the subject of the complaint of the substance of the
151 complaint as soon as doing so will no longer jeopardize the investigation.
152 (5) If the department is unable to substantiate a complaint, any record related to the
153 complaint or the investigation of the complaint:
154 (a) shall be classified under Title 63, Chapter 2, Government Records Access and
155 Management Act, as:
156 (i) a private or controlled record if appropriate under Section 63-2-302 or 63-2-303; or
157 (ii) a protected record under Section 63-2-304; and
158 (b) if disclosed in accordance with Subsection 63-2-201(5)(b), may not identify an
159 individual child care program, licensee, certificate holder, or complainant.
160 (6) Any record of the department related to a complaint by an anonymous complainant
161 is a protected record under Title 63, Chapter 2, Government Records Access and Management
162 Act, and, notwithstanding Subsection 63-2-201(5)(b), may not be disclosed in a manner that
163 identifies an individual child care program, licensee, certificate holder, or complainant.